IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

CORAM : JUSTICE **N.SESHASAYEE**

W.P.No.19428 of 2020

K.A.Ravindran ... Petitioner

Vs

1.The District Collector
[North Arcot Ambedkar District]
Vellore District
Vellore & District.

2.The Tahsildar
Gudiyattam Taluk Office
Gudiyattam – 632 602
Vellore District. [RCA No.1930/95]

3.The Special Tahsildar [L &A]
Adi Dravidar Welfare
Gudiyattam – 632 602
Vellore District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents herein to restore the petitioner's name in the revenue records in respect of the lands comprised in S.No.657/2 for an extent of 0.32.0 hectares at Gudanagaram Village, Parvathipuram, Gudiyattam Taluk, Vellore District and also transfer patta for the said lands in the name of the petitioner in pursuant to the order made in W.P.No.4168 of 1997 dated 17.12.2009 on the file of this Court and

also by considering the representations made by the petitioner dated 04.01.2020, 10.01.2018 and 22.10.2020.

For Petitioner : Mr.K.Ravindran (Party-in-Person)

For Respondents : Mr.S.N.Parthasarathy
Government Advocate

ORDER

1. Is it a display of bureaucratic apathy, plain and pure, to a citizen's right to property, or is it showcasing its insensitivity, if not inefficiency? Either way, it is not the Executive's finest hour. The facts of this case do not trouble the comprehension of anyone that they do not even require a graduation in law to appreciate, what this Court can readily state as a callous waste of public finance and flagrant transgression of a citizen's right to property. The facts are:

- The petitioner owned a property measuring 2.45.5 hectares in S.No.657/2, Gudanagaram Village, Parvathipuram Firka in Gudiyattam Taluk at Vellore District. Out of this, 0.32.0 hectares was notified for acquisition under the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act [T.N.Act 31/1978] whereunder a notification came to be published under Sec.4(1) of the Act in the North Arcot

District Gazette Extra Ordinary Gazette in RCK.No.10/7443/96 on 25.11.1996.

- Soon after the notification, the Government cancelled the patta that stood in the name of the petitioner, and mutated the revenue records and transferred the patta in its favour.

- The petitioner challenged the said notification in W.P.No.4168 of 1997. This Court upheld the challenge, and quashed the notification issued under Section 4(1) of the Act Vide its order dated 17.12.2009 (reported in 2010 (1) CTC 788).

- Consequent to the Order of this Court, revenue records were not mutated to restore the name of the petitioner in the patta/the record of rights. Petitioner hence, began his second innings of his engagement with the officials and this has commenced some 10 years back, but the pachydermic lower rung bureaucracy stood immobile. He made multiple representations for restoring the patta of the land in his name, but none was there to acknowledge his right to have it restored. Now he is before the Court with this petition.

2. Mr.K.A.Ravindran, the petitioner, appeared in person and made a statement that since 1996, he has not been able to develop the property profitably or alienate the property. At least from 2010, after the order passed by this Court in W.P.No.4168 of 1997, the Government ought to have restored the entries in patta in his name. He submitted that due to this deliberate act of the Government in denying him the absolute enjoyment of the property based on his title, the Government has unjustly invaded his right to property.

3. Per contra, Mr.S.N.Parthasarathy, the learned Government Advocate, made a fervent representation backed by his counter that, apart from the petitioner's property there are other properties as well which are included in the notification for providing housing to a section of the members of the schedule caste community, and that the property of the petitioner is required for providing a passage for the other properties covered by the same notification.

4. What a grand statement that this Court heard a decade after the quashing

of the very notification issued for acquisition, that the property of the petitioner was significant for a certain welfare measure fashioned for the socially and economically weaker section of the society! This Court is befuddled at the alacrity with which the bureaucracy functions. The beneficiaries of the intended project might have lived their lives and might have moved with time. What now remains to be done may worry none except the petitioner, and may disturb none except the Court.

5.1 What does this mean in the context of what has happened?

- First, the policy involving a laudable objective of providing housing to the socially and economically weaker section of the society close to a quarter of a century ago in 1996, now stays hidden in the safest slots of hibernation.

- Secondly, the Government had an option to acquire the same land again, free of all the statutory flaws, immediately after the disposal of W.P.No.4168 of 1997 in 2010, but it was not done. And if it has to happen today, the revival of the project will be at a considerable cost, manifolds than that would have been incurred under the T.N.Act 31/1978, as compensation has to be now computed only in terms of the

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act [Central Act 30/2013]. If the bureaucracy considers this option as a face-saver, from where will it find the money for meeting the differential cost of acquisition except tapping the public finance? The bureaucracy has many manuals to guide it, but not one of them appear to have a chapter on fixing the internal accountability for the mess which some of its officials are prone to create.

- Thirdly, the plight of the petitioner and his right to property per se. Here, the maxim *res ipsa loquitur* makes an obvious statement and hovers around like an omnipresent polestar.

5.2 Was not avoiding this situation within the ability of the bureaucracy? Or, to state it differently, whether administrative mishaps such as these (which judiciary these days is accustomed to witness) display any attitudinal-deficit on its part? If only the bureaucracy has spared a degree of concern for redeeming itself from situations where it walks freely, it would have injected the right dose of professionalism in the functioning of the lower rung officials. The easiest pick to demonstrate the bureaucratic indifference are

not even litigations such as these, but the petitions which are filed with utmost regularity for initiating action for contempt for non-compliance of this Court's orders. These petitions are filed more like a wake-up-call service for the bureaucracy to know that an order such as the one of which it is alleged to be in contempt has been passed. To avert a petition for contempt, the bureaucracy has done precious little, whereas Courts have fashioned the writ of continuing mandamus as a device to steer clear of such attitudinal deficits. Whither go administration, and *quo vadis* justice?

6. No Court likes to lecture the bureaucracy on administration; it is not part of its core judicial activity. However, when the direct fallout of administrative misfeasance and malfeasance or non-feasance is felt by the Court, it then becomes necessary for the Court to sensitize the bureaucracy on litigation-avoidance. In its order in a batch of cases in ***Thirumagan Vs The Superintendent of Police*** [(2020) 4 MLJ (Crl) 133], this Court underscored the need for avoiding a litigation that can be, and has to be avoided. It observed:

> *"1.2 Litigation-avoidance is critical for eliminating the clogs that chokes the Court system, and its thematic significance and contemporary relevance to our legal system cannot be ignored. One of*

the contributory factors that diminishes the efficacy of the Courts to render justice in time is attributable to diverting the scarce judicial time to address identical or similar causes repeatedly. Does it not reflect that Courts are used with an inadequate sense of responsibility?

1.3 Any discourse on speedy justice invariably focuses on the exit points to the legal system, on the disposal of cases, and there has been inadequate discussion on the nature of cases that enter the system at its entry points. Here lies the scope for litigation-avoidance. The importance of avoiding a litigation that can be avoided cannot be over emphasized since it clogs and obstructs the free outflow of cases, and contributes to what has come to described as 'docket explosion'. Nothing explodes where there is a responsibility to avoid it..."

In ***K. Gajendran Vs Land Acquisition Officer cum the District Collector, Kancheepuram*** [2018 (2) CWC 593], this Court observed:

"4.3 Walk a short distance additionally, it becomes administration for the people. Administrative action therefore, can no longer remain an aspect of administrative obligations and duties dictated by legal semantics and its interpretation, but must be understood as part of a broader facet of administrative care, with little humanism and understanding of the people. Bend not the law but blend it with concern for the citizenry. Hence, a conceptual, people-oriented transition, if not radicalisation, especially of those in the lower rung of the bureaucracy is required, and it can make the difference.

4.4 Its immediate and beneficial ramification will be reflected in the ability of the Court to conserve judicial time for better utilisation in cases that cry for attention. Here is a lower rung authority who stationed himself in indecisive confusion on a trivia for eight years till this litigation broke the inertia. This is symptomatic of a crisis in attitude that appears to have infected many, if the several instances where the Courts witness its reflection are a parameter. In the final analysis, this augurs well only for the docket-augmentation in Courts, but not for the quality of service they are expected to provide. Often it is said that law does not take notice of trivia, yet a sizable number of cases that throng this Court spring from trivia. In each of them the authority concerned has the first opportunity to do, and to do it correctly, that which this Court ultimately directs them to do. Where lies his pride?"

7.1 Where then is the institutional pride within the bureaucracy? The Executive knows, or at least ought to know, that the judiciary strikes every time its radar beeps for administrative malfeasance, yet the former has not taken efforts to redeem itself from recurrence of such instances. It continues to be a feeder of litigations, a sizable number of which could be avoided if only it has been sensitive enough to preserve its institutional pride.

7.2 It is hence bureaucracy is required to be informed of a need for a huddle

within for evolving anything which is within its power to design, experiment for breaking the inertia. It would have happened if the bureaucracy has operated with a scintilla of institutional pride, for a bureaucracy with institutional pride would have introspected, brought in organizational change, infused greater internal connectivity and co-ordination and would have brought in correctives to avoid situations where it is caught playing the wrong line, more often during the judicial review of its actions.

7.3 The bureaucracy may find itself trapped in a web of its own inconvenience. It is certainly within its power to swipe off this tangled web. But, to do it cannot be considered as within its choice any more, for the effects of its adverse actions spill on the judiciary, and swirl around the judicial wheels like the tentacles of a predatory octopus. It's time the bureaucracy realized that the Courts are not an extension of its administrative structure to carry a needless burden contributed by the former; and it is told now, and in firmer terms, that Judiciary is not Jesus Christ to carry the cross for the sins of the bureaucracy.

8.1 Reverting to the aspect on remedying the plight of the petitioner of this

case, this Court is conscious of the limits of its jurisdiction, and the Constitutional compulsions on it to respect the jurisdictional demarcation of the Legislature, the Executive and the Judiciary. There may be a school of thought that may believe in a jurisdiction in the Constitutional court to step in to direct the Executive on what it needs to do. This Court believes that such exercise is permissible in our Constitutional scheme only for correcting a wrong, and for filling a legislative vacuum for advancing any immediate Constitutional objectives and aspirations. However, where any act of the Executive is done under a statute, then the jurisdiction of the Court stops where its role of reviewing the administrative action ends. To over step this line would be a transgression on the Executive domain, and this Court would refrain from crossing the *lakshman rekha*. The Court may have the power of a giant, but it has to choose its moment to act like a giant.

8.2 Accordingly, if this Court cannot instruct the Executive for developing and implementing any housing project for the socially and economically weaker section of the society generally in the first place, then it cannot assume that it has powers to direct the same Executive to acquire it afresh and direct the revival of a project specifically, especially when the same

Court has held that the acquisition once attempted was bristled with illegality. There perhaps is one exception to this rule, where, notwithstanding the illegality in the acquisition proceedings, if the land is fully utilized, and ordering restoration of the status quo ante as it was prior to the acquisition is an unrealistic option, then the Court does direct fresh acquisition of the same land. But, even this is resorted to not for the benefit of the Executive, but for the benefit of the land owners. Where however, the status quo ante can be restored then a land owner has to be given back his property with full right of ownership. The Executive is reminded that there must be, and at all times there ought to be fairness in administration. If not, it may mean that this Court does not respect its own orders, which would then mean that this Court has lent a tacit assent to the Executive-unfairness in the latter's dealings with the affairs of the citizen.

8.3 There is another perspective to it. Article 261 of the Constitution mandates that the Executive shall give full faith and credit to all judicial acts. See: ***Scheduled Castes and Scheduled Tribes Officers Welfare Council Vs State of U.P. and another*** [(1997) 1 SCC 701, ***S. Palaniswamy v Commissioner, H.R & C.E,*** [(2001) 2 LW 783]. Therefore, in all fairness,

as there was no fresh acquisition, the Executive ought to have re-mutated the name of the petitioner after the order in W.P.No.4168 of 1997 as per the doctrine of full faith and credit to the order passed in a judicial proceeding.

8.4 Whichever be the angle of approach, the course available to this Court is to direct the 2nd respondent to re-mutate the patta in the name of the petitioner for the land in question and the first respondent is directed to ensure that the second respondent complied with the direction.

9. It does not stop here. The Executive, in all probability may now comply with a direction to re-mutate the record of rights, but is it not true that the petitioner has been a silent victim of the Executive insensitivity? To stop with a direction such as the one indicated may only aid in providing an exit route to the Executive to escape from accounting for its default. Should this Court with the Constitutional obligations on it, turn a Nelson's eye to such administrative defaults?

10. It is indisputable that the possession of the land in question is with the petitioner, but its profitable enjoyment is largely curtailed since his name has

not been re-mutated in the revenue records. The State has no authority to interfere with the right to property of the citizen except in accordance with law. Here, the State machinery is caught on the wrong foot when it failed to re-mutate the land in question in the petitioner's name in the revenue records. A record of right such as the patta is indispensable for exercising absolute right of ownership over the property, and when patta is not re-mutated despite the petitioner requiring it for ten years now, it is an obvious instance of the Executive interfering with the right to property of the citizen.

11. The bureaucracy is told that right to property has a close nexus to right to life under Art.21 of the Constitution, since the former, to a substantial extent, defines the quality of life a citizen has secured for himself under the Constitution. In ***Delhi Airtech Services Private Limited v State of U.P*** [2011 9 SCC 354] the Supreme Court termed the right to property as a human right under Article 21 and alluded to it as the seed bed for securing other human freedoms such as liberty. The Supreme Court observed:

> *"30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured,*

else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists."

The growth of Constitutional jurisprudence in this country has been chiefly characterized by the constant search of the Constitutional Courts to discover the expandability of the concept of right to life under Article 21. Its objective is to include as many, exclude none, and at all times to check the Executive temptations to tread upon it, even accidentally, except in accordance with the procedure established by law. The multitude of rights that go to constitute right to life, some time termed as penumbral rights, are comparable to the *advaita* philosophy in that each of such fractional right itself possesses the characteristics of the whole. *Soham*. Hence, an understanding of the right to property only in economic terms may not be a right idea, nor will be an understanding that its infringement should produce a tangible loss. An infringement of right to property will therefore enjoy an expanded meaning proportionate to the expandability of the right to life under the Constitution. It will now accommodate a meaning which includes the quality of life even in terms of the happiness-quotient which a citizen is entitled to, and the State machinery shall stay away from affecting it, unless it

has a warrant in law to interfere. Failure to re-mutate the land in the name of the petitioner may not affect his title, but definitely restrict his ability to enjoy it in the manner of his choice. It could therefore, be derived that when one is denied of his right to exercise all that emanates from the right of ownership, which includes right to alienate or encumber by a method not supported by law, the anxiety such denial generates in the hearts of men will offend the quality of life under Article 21, and impinge upon the cherished ideals of human dignity zealously guarded by it.

12.1 In ***Nilabati Behera v. State of Orissa,*** [(1993) 2 SCC 746], the Hon'ble Supreme Court has held**:**

> *"30. **....**we have now to examine whether to seek the right of redressal under Article 32 of the Constitution, which is without prejudice to any other action with respect to the same matter which may be lawfully available, extends merely to a declaration that there has been contravention and infringement of the guaranteed fundamental rights and rest content at that by relegating the party to seek relief through civil and criminal proceedings or can it go further and grant redress also by the only practicable form of redress — by awarding monetary damages for the infraction of the right to life.*
>
> *33. The old doctrine of only relegating the aggrieved to the remedies*

available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.

34. ..... The purpose of public law is not only to civilise public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making "monetary amends" under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law — through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v State of Bihar[(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. ***It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims*** *in exercise of their writ jurisdiction. In doing so the courts take into*

account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned…."

This was followed by the Hon'ble Supreme Court in ***United Air Travel Services v. Union of India,*** [(2018) 8 SCC 141], where it held that "*..it is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation in exercise of writ jurisdiction. The objective is to ensure that public bodies or officials do not act unlawfully. Since the issue is one of enforcement of public duties, the remedy would be available under public law notwithstanding that damages are claimed in those proceedings".*

12.2 In the spirit of what the Supreme Court has held, this Court now directs the respondents to pay the petitioner a sum of Rs.50,000/- as compensation for interfering with the right to property of the petitioner for over a decade, with no lawful justification.

12.3 It is not ameliorative, but palliative. When an infraction of a

fundamental right is spotted on which the Executive chose to repose and allowed it to continue when it had an option to remedy, Constitutional courts will draw strength from the spirit of the Constitution to remedy the wrong. Courts shall not patronize that which the Constitution does not encourage. As was pointed out by the Supreme Court in ***Nilabati Behera v. State of Orissa*** [(1993) 2 SCC 746], this Court, under Article 226, is empowered to make monetary amends by granting suitable compensation in public law for the infraction of fundamental rights by the State and its officials. It is to inform the State and its bureaucratic machinery that when it interferes with the fundamental right of the citizen without lawful excuse, it may have to answer for it. Far from being a deterrent, where there is an institutional pride in the bureaucracy, this Court hopes that it might not like to have a recurrence.

13. In conclusion, this Court allows the petition and directs the second respondent to mutate the Village Permanent Register in the name of the petitioner or or before 02-02-2021. For all the sufferings that the administrative machinery has inflicted on the petitioner, it shall now pay the petitioner a sum of Rs.50,000/- in damages to the petitioner.

Post the matter to 01-03-2021 for reporting total compliance.

06.01.2021

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Index : Yes/No
Internet:Yes/No
Speaking Order / Non-speaking Order

Note : Issue order copy on 19.01.2021

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